IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4066 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RUSTAM DOSABHAI KHAJOTIA

Versus

COMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 4066 of 2004

MS BANNA S DUTTA for Petitioner No. 1

MS AC RAVAL, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 19/08/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged his detention order dated 15-03-2004. By

the said order, the petitioner is detained as a "bootlegger" under PASA. Along with the order of detention, petitioner is also served with the grounds of detention. In the grounds of detention, there is a reference about three criminal cases registered against the petitioner. All these cases are registered under Bombay Prohibition Act. It is alleged that the petitioner is dealing in foreign liquor. The detaining authority has also recorded statements of some witnesses. After being satisfied subjectively, the detaining authority has passed the order of detention against the petitioner, which is impugned in this petition.

2) Ms.Dutta, learned advocate for the petitioner submitted that there is a delay in deciding the representation of the petitioner. It is submitted by her that the petitioner has made a representation to the detaining authority on 22nd March, 2004 and the same was decided by the State Government on 3rd April, 2004, therefore, there is a delay in deciding representation of the petitioner and on this ground this petition is required to be allowed.

3) To substantiate her say, the learned advocate for the petitioner has relied upon a decision of this Court in NARAYAN TUKARAM BADDI v. State of Gujarat & Ors. reported in 1996 (1) GLR 31, wherein on the ground of unexplained delay in considering the representation, this Court has set aside the detention order. In the aforesaid case, the Court was concerned with a case wherein the petitioner was detained under the provisions of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act. The detenu therein made a representation, which was disposed of after a considerable delay and delay was not satisfactorily explained. This Court held that the authorities may act with utmost promptness in disposing of the representation. While quashing the detention order passed against the detenu, this Court held that right is guaranteed to every detenu of making representation at the earliest opportunity against the order of detention and as a necessary corollary by using words "as soon as may be" in Article 22 (5) of the Constitution of India, the anxiety on the part of the framers of the Constitution of India to inform the detenu of the grounds of detention is reflected. This Court further observed that once the earliest opportunity is provided to make a representation against the order of detention, correspondingly, there is a constitutional obligation for the speedy and expeditious consideration of such representation by the authority. This Court

further held that utmost promptitude, expedition and diligence is expected from the authority to consider such representation. Even though no time limit is prescribed for the purpose of deciding representation, any indifference, avoidable delay or remissness on the part of the authority in considering the representation would vitiate the continued detention of the detenu.

4) Ms.Archana Raval, learned AGP, submitted that the representation of the petitioner dated 22nd March, 2004, has been received by the detaining authority on 25th March, 2004 and it was sent to the State Government on the same day. It is submitted by her that the State Government has also received the said representation on 25th March, 2004, while it was decided on 3rd April, 2004. She submitted that so far as State Government is concerned, she has not received any instruction as to when the State Government has received the said representation and when the same was decided, therefore, she is not in a position to state whether there is any delay on the part of the State Government or not. Apart from that, even no reply is filed by the State Government and the delay in deciding representation of the petitioner has remained unexplained. It is a settled position of law that the representation is required to be dealt with promptly and if there is any delay the same is required to be explained properly. In that view of the matter, since the representation of the petitioner is not dealt with forthwith, this petition is required to be allowed and as further detention of the petitioner would be violative of Article 22 (5) of the Constitution of India, the same is held to be illegal.

5) In view of above discussion, this petition is allowed. The continuous detention of the detenu is held to be illegal and the detenu, Rustam Dosabhai Khajotia is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B.Majmudar,J.)
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